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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 11 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment of Part 22 of the)
Commission's Rules to Delete) CC Docket No. 94-46
Section 22.119 and Permit the Use)
of Transmitters in Common Carrier)
and Non-Common Carrier Services)

COMMENTS OF PAGING NETWORK, INC.

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SUMMARY

Paging Network, Inc. ("PageNet") unconditionally supports the Commission's proposal to eliminate Section 22.119 of the rules. It fully concurs with the Commission's assertions that new technology, increased transmitter capacity, operational economies and the competitive nature of the paging industry, as well as the Congressional mandate to enhance comparability in the regulation of similar communication services, provide assurances that elimination of the rule is appropriate and will not adversely affect the quality of service provided to the public.

PageNet supports total elimination of Section 22.119 and is aware of no circumstances in which it would be necessary to retain its effectiveness. PageNet recommends that the Commission avoid the alternative of establishing standards or criteria that licensees would have to meet in order to qualify for exemption from the rule. Such an approach would impose unnecessary regulatory burdens on licensees and enforcement obligations on the Commission. Licensees should be allowed to compete in the marketplace by efficiently and economically implementing their systems. In addition, PageNet submits that compelling incentives currently exist that force providers to maximize their use of licensed frequencies and discourage spectrum warehousing. Finally, elimination of the rule will enhance carriers' ability to provide efficient innovative messaging and PCS services, pursuant to a consistent regulatory approach, throughout the 929-931 MHz band.

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To: The Commission

COMMENTS OF PAGING NETWORK, INC.

Paging Network, Inc. ("PageNet"), through its attorneys, hereby submits its comments in the above-captioned proceeding^{1/} in which the Commission has proposed to permit the joint licensing and use of transmitters in the common carrier and private carrier services. PageNet heartily supports the proposal as one that will enable paging licensees to provide messaging services more economically and expeditiously to the public, with no detriment to the quality of the services provided.

I. INTRODUCTION

A. Statement of Interest

PageNet is the largest and most rapidly expanding paging company in the United States. It provides both private and common

^{1/} Notice of Proposed Rule Making and Order, released June 9, 1994 (hereinafter "Notice"). In the Order, the Commission granted waivers, pending the outcome of this proceeding, to PageNet and other carriers who had requested authority to provide non-common carrier service using transmitters licensed under Part 22.

carrier service to over 3 million subscribers. PageNet files approximately 150 transmitter authorization applications per month to support its existing systems and to enable it to expand into new markets. It has been granted thousands of authorizations over the course of its phenomenal growth for both common carrier and private carrier paging facilities and, as a result, has been able to construct complex, integrated systems that offer local, regional and nationwide paging services attuned to the demands of the marketplace. Its broad experience in building out both common carrier and private carrier systems places it in an excellent position to evaluate the Commission's proposals, which are, in fact, directly responsive to the issues raised by PageNet in its waiver request seeking the regulatory relief proposed herein.

B. Summary of the Notice

In the *Notice*, the Commission requests comment on its proposal to eliminate Section 22.119 of the Rules. It asks whether, in the alternative, Section 22.119 should be retained but modified to permit joint common carrier-private carrier use of transmitters only in limited circumstances, such as to provide a different kind of service (e.g., nationwide vs. regional, regional vs. local) or where certain technology is employed (e.g., batching techniques). Further, the Commission asks whether there are circumstances which would require that the rule be retained, whether safeguards are needed to prevent warehousing of frequencies, and, finally, whether two different licensees should be allowed to share the same transmitter.

II. DISCUSSION

A. Restrictions on Joint Common Carrier-Private Carrier Licensing of Paging Transmitters Should be Completely Eliminated.

In proposing to eliminate Section 22.119, the Commission stated that its action would not cause service to the public to suffer, citing "advances in technology," "dramatic increases in [transmitter] capacity" (Notice at ¶3), "substantial economies" (*Id.* at ¶4) and industry competitiveness that "encourages paging carriers to provide an acceptable quality of service or risk losing customers to competitors." (*Id.* at ¶5) In addition, the Commission noted the statutory requirement imposed on the agency by Congress in the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") to "create a comprehensive regulatory framework for all mobile services." (*Id.* at ¶5) PageNet agrees with the arguments summarized in the Notice, which reflect in many instances PageNet's own views regarding the restrictions imposed by Section 22.119 on the licensing of common carrier paging systems.^{2/} Thus, PageNet urges the Commission to eliminate Section 22.119 entirely as it applies to paging operations.

Elimination of the rule will enhance the Commission's objective in establishing comparable regulations affecting similar services. In addition to advancing those goals with respect to paging services licensed under Part 22 and Part 90 of the rules (see discussion *infra* at p. 7), it will further the ability of

^{2/} See e.g., Paging Network, Inc. Request for Waiver of Section 22.119 of the Commission's Rules, April 6, 1993, amended July 15, 1993 and November 2, 1993.

licensees of new systems providing narrowband messaging services to build out those systems more efficiently and less expensively.

As the Commission states in the *Notice*, elimination of the rule will not negatively impact the quality of service provided to the public. Competitive forces at work in the industry today are so substantial as to override any concerns that may have prompted the rule's adoption. Just as the need to minimize delays and interruptions in service drives carriers to obtain and construct additional RCC frequencies, so that the supply of channels in many of the major markets is now exhausted, the necessity to maintain service quality will ensure that carriers will not continue to operate shared RCC/PCP transmitters beyond the point where it is prudent to do so. Customer loyalty is never so great that the licensee can afford to offer an inferior service.

Since its inception, Section 22.119 has served to preserve transmitter capacity for common carrier operations and thus, ostensibly, to protect subscribers from service delays and interruptions. With the advent of digital paging at 1200 and 2400 baud rates, as stated in the *Notice*, transmitter capacity has expanded exponentially to reach 400,000 units for numerical service. Even at these capacity figures, PageNet submits that in congested markets around the country, where virtually all RCC channels have been licensed, loading levels are likely to make shared use transmitters relatively uncommon. However, there are numerous smaller communities where customers of RCC and PCP frequencies would benefit from the economies of dual licensing of co-located transmitters. As markets grow and systems develop,

competitive pressures will again assure that reliance on such shared use will not exceed what is reasonable.

Elimination of the rule will afford licensees maximum flexibility in efficiently and economically building out their systems. In implementing regional systems, for example, it makes no sense to prohibit transmitter sharing where regions encompass local systems in small or medium-sized communities and transmitter capacity can readily satisfy both the local and regional service requirements for an initial period of time. Consistent with the goal of furthering economic efficiencies, the per subscriber costs of building the additional transmitters is lower when loading is maximized, as infrastructure costs can be spread over a greater number of subscribers.

In summary, where competition is robust, as it is in the paging industry, there is no need for the Commission's rules to set standards or proscriptions that unnecessarily encumber licensees and burden the Commission's enforcement systems in order to ensure that service quality is not compromised. Therefore, PageNet strongly supports the early and total elimination of Section 22.119 as it applies to paging operations.

B. The Public Interest Does not Require Even Limited Retention of Section 22.119 Respecting Paging Stations.

The Notice seeks comments on whether, as an alternative to the total elimination of Section 22.119, it might be preferable to set standards under which licensees would be relieved of its provisions. As examples the Commission suggested making the rule inapplicable only in cases where licensees used shared

transmitters to provide services that are different in geographic scope (i.e., nationwide vs. regional, regional vs. local) or where batching functions are proposed to be implemented. PageNet opposes adoption of any such limitation or standard.

Limitations of the type suggested in the Notice would merely create a definitional nightmare for the Commission and licensees as to whether, for example, a given system would qualify as "local" or "regional." The resulting debate would produce administrative burdens for the agency, costs to licensees and delays in implementation of service. Rather than having to clear administrative hurdles, applicants should be free to deploy systems in the most economic manner, consistent with good engineering principles, without seeking Commission approvals and having the delays and expense associated therewith.

PageNet is aware of no circumstances where it would be necessary to continue to limit the dual-service use of transmitters in order to avoid abuses by licensees or degradation of service to subscribers. To keep up with public demand, PageNet is consistently and continuously designing, licensing, constructing and implementing new paging systems and expanding its existing operations. These systems overlap one another geographically both as a function of providing the particular extent of local and wide-area coverage the public requires and in order to meet the sheer level of demand for such services in the marketplace. Thus, in some instances, regional PCP and RCC systems cover some, but not all, of the same territory. To prohibit dual-service transmitters in situations where like-type

services (e.g., local or regional) are being provided would be arbitrary and make no sense. In addition, it could unjustifiably limit licensees' ability to serve rural areas with the same diversity of coverage options that more populated areas enjoy.

The possibility of retaining the rule except where licensees implement store-forward, or batching, technology in their systems is likewise uncalled for. Batching is so much the standard of the industry today that such a provision would virtually swallow the rule. Almost without exception, batching capability is an integral element of terminals currently available on the market.

Given the present structure and maturity of the common carrier service, PageNet is unaware of any circumstance in which dual licensing of paging transmitters should be prohibited. Therefore, the Commission should reject any approach that would retain Section 22.119 in any form.

C. Elimination of Section 22.119 Will Enhance Comparability with Part 90 Rules.

Consistent with the requirements of the *Budget Act*, the Commission has undertaken to establish a regulatory framework that provides for comparable rules to govern the provision of similar services.^{3/} In so doing, the Commission has found RCC and PCP paging to be "substantially similar" services as to which it is appropriate to identify and conform any differences in technical and operational rules. (*Id.* at ¶19) In that light, it is

^{3/} Implementation of Section 3(n) and 332 of the Communications Act, GN Docket No. 93-252, ("Regulatory Parity Proceeding") 8 FCC Rcd 7988; Further Notice of Proposed Rule Making, FCC 94-100, released May 20, 1994 ("Further Notice").

particularly fitting that Section 22.119 be eliminated at this time. There is no comparable provision within Part 90. Section 90.415, which sets forth the prohibited uses of Part 90 facilities, specifically applies to stations and not transmitters. Indeed, at the time PageNet filed its July 1993 waiver request, the staff in the Private Radio Bureau specifically confirmed that there was no Part 90 provision requiring such a waiver.

The *Notice* states that the Commission finds the proposal to eliminate Section 22.119 to be "not inconsistent" with the initiatives and goals of the *Regulatory Parity Proceeding*. PageNet believes the action to be not only not inconsistent, but specifically called for to advance the Commission's objectives and the Congressional mandate.

D. Adequate Safeguards Currently Exist to Protect Against Spectrum Warehousing.

The *Notice* seeks comment on appropriate safeguards to prevent warehousing of exclusively assigned frequencies in the event Section 22.119 is eliminated. (*Notice* at ¶7) PageNet's view is that adequate safeguards currently exist under the rules, which address that issue.

First, with respect to common carrier frequencies, the buildout of systems in major markets has saturated existing frequencies to the point that there are few, if any, frequencies remaining in those markets. Current service requirements in those markets typically mandate that licensed frequencies be heavily loaded and carriers have compelling disincentives against warehousing such frequencies. In rural markets where spectrum is

more plentiful, the more limited demand for frequencies creates a similar disincentive to warehouse.

Second, on the private carrier side, the Commission's recently-adopted rules governing earned exclusivity establish a regulatory environment in which only licensees who are intent on providing service within allotted buildout periods are motivated to participate in the licensing scheme.^{4/} Since regional and nationwide exclusivity may be earned only where systems consisting of a minimum of 70 and 300 transmitters, respectively, are constructed and placed into operation, within prescribed time periods, the ability to warehouse spectrum in the hopes of later capitalizing on its value becomes a short-lived, non-viable prospect.^{5/}

In light of the structural and regulatory safeguards that are already at work to limit the extent to which spectrum efficiency is reduced by frequency warehousing, PageNet submits that further rules are unnecessary and should not be adopted.

^{4/} See, Report and Order in PR Docket No. 93-35, Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, 8 FCC Rcd 8318 (1993).

^{5/} In its comments in the *Regulatory Parity Proceeding*, PageNet reiterated its recommendation that RCC paging systems be licensed on a market-area basis, rather than transmitter-by-transmitter. Included in PageNet's proposal are minimum buildout requirements, similar to those adopted in the Part 90 earned exclusivity rules. Such a licensing scheme would create additional warehousing disincentives on the common carrier side, by increasing the investment required to retain operational authority on any licensed frequency. See Comments of Paging Network, Inc. at 14-18.

E. Dual Licensing of Paging Transmitters to Different Licensees Should Not Be Proscribed.

Finally, the Notice requests comment on whether two different licensees should be allowed to share the same transmitter. PageNet supports maximum flexibility of paging licensees to provide the highest quality service at the most competitive price. Therefore, PageNet would oppose adoption of a rule that would prohibit shared use of facilities.

There is nothing in the rules specifically permitting or forbidding such a practice. The issue is one which would appear to represent an area of business judgement which would result in the most economical method of operation and hence the lowest rates to customers. The competitive self-interest of paging operators should be enough to prevent abuse of the practice, since shared transmitter use makes it easier for both parties to compete.

Based on past discussions with Commission staff, it is PageNet's understanding that the agency's reluctance to license shared facilities has been due to a concern regarding the competitive impact of such arrangements on other paging operators not involved in the sharing arrangement. Specifically, the apprehension has been that some operators might band together and achieve such operating efficiencies that they would drive out other competitors.

While fears of this type may have been warranted in the early phases of development of the common carrier paging industry, the current competitiveness of the industry now allays them. In most markets, the large number of service providers could likely support multiple shared arrangements, assuming that loading levels

and transmitter capacity were such as to permit them, making it unlikely that any coalition could effectively limit competition (i.e., other operators could also band together and continue to compete in price). The Commission, therefore, should avoid any rules that would prevent the shared use of transmitters by two different licensees.

III. CONCLUSION

For the foregoing reasons, PageNet supports the Commission's proposal to eliminate Section 22.119 and to allow unrestricted shared use of common carrier paging transmitters for common carrier and private carrier paging. PageNet also supports allowing two different common carrier licensees to share such transmitters. Both proposals will advance the goal of providing customers with efficient, low cost paging service, while the high level of competition in the paging industry will assure that quality of service is not compromised.

Respectfully submitted,

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I, Lila A. Mitkiewicz, hereby certify that a copy of the foregoing
Comments of Paging Network, Inc. was sent, this 11th day of July 1994,
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